



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LOUIS HOZZ and ETTIE HOZZ)

Appearances:

For Appellant: Milton D. Sapiro, Attorney at Law.

For Respondent: J. J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act of 1935 (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner upon the protest of Louis Hozz and Ettie Hozz to his proposed assessment of an additional tax in the amount of \$141.50 for the year ended December 31, 1938.

Prior to the giving of notice of this proposed assessment, another additional assessment in the amount of \$61.70 had been made with reference to the same income year and had been paid. It is the position of the Appellants that the Commissioner lacked authority to propose the second assessment after the former one for the same year had been paid. Appellants state in this connection:

When the Commissioner issued his deficiency notice of June 20, 1944, he was exercising all the authority granted to him under Section 19 of the Personal Income Tax Act. When the protest was filed, the subject matter of this deficiency was then open to further consideration and the Commissioner had the right to reconsider the computation and the levy. He did this. At that time he had all possible evidence * * * before him. He thereupon affirmed the deficiency for 1938 in the sum of \$61.70 and notified the taxpayers of that fact. The taxpayers paid the deficiency so assessed. The Commissioner's authority then had ceased."

No evidence was presented to us concerning the basis of computation of the proposed assessment which is involved in this appeal. The Appellants have not attempted to show that the assessment was erroneous if the Commissioner had authority to propose it.

Appeal of Louis Hozz and Ettie Hozz

Section 19 of the Personal Income Tax Act of 1935, as amended in 1937, provided in part:

"If the commissioner determines that the tax disclosed by the original return is less than the tax disclosed by his examination he shall mail notice to the taxpayer at his last known address of the deficiency proposed to be assessed. The notice shall set forth the details and computation of such **deficiency**." (Stats. 1937, p. 1850)

This portion of the Section was amended in 1941 to read:

"If the commissioner determines that the tax disclosed by the original return is less than the tax disclosed by his examination he shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed. Each notice shall set forth the details and computation of such deficiency." (Stats. 1941, p. 3073; underlined words were added by the amendment.)

The notice of the additional deficiency proposed to be assessed was dated July 20, 1942, and was, accordingly, given after the effective date of the 1941 amendment.

The Personal Income Tax Act does not expressly prohibit the making of two deficiency assessments against a taxpayer for the same taxable year. The only apparent reason for the 1941 amendment to the portion of Section 19 above quoted was to remove any doubt which might otherwise be thought to exist as to the authority of the Commissioner to do so. We conclude, accordingly, that the Section, as amended in 1941, expressly authorized the proposing of a second assessment against the Appellants for the income year 1938. The Appellants not having established on other grounds the invalidity of the proposed assessment involved herein, the action of the Commissioner upon the Appellants' protest against that assessment must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, upon the protest of Louis Hozz and Ettie Hozz to a proposed assessment of additional tax in the amount of \$141.50 for the year ended December 31, 1938, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of March, 1944 by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary